

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEWEL E. DYER,  
Plaintiff,  
v.  
TIMOTHY PEARCE, et al.,  
Defendants.

Case No. [18-cv-04052-JD](#)

**ORDER TERMINATING  
PLAINTIFF'S IN FORMA  
PAUPERIS STATUS**

Plaintiff, a detainee, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed at screening. Plaintiff filed an appeal with the Ninth Circuit and the case has been referred back to this Court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." *See O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

1 Plaintiff's complaint in this case was duplicative of a prior action. *See Dyer v. Pearce*, No.  
2 17-cv-2640 JD. The earlier case was dismissed with prejudice at screening and the Ninth Circuit  
3 denied his appeal. In this case plaintiff argues that the dismissal of the prior case was improper,  
4 yet the appeal of that dismissal has already been denied. Because plaintiff's current action has no  
5 arguable basis in fact or law his in forma pauperis status is **TERMINATED**. The Clerk is  
6 requested to forward this Order to the Ninth Circuit in case No. 18-17080.

7 **IT IS SO ORDERED.**

8 Dated: November 2, 2018

9  
10  
11   
12 \_\_\_\_\_  
13 JAMES DONATO  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEWEL E. DYER,  
Plaintiff,

v.

TIMOTHY PEARCE, et al.,  
Defendants.

Case No. [18-cv-04052-JD](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 2, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jewel E. Dyer ID: #T-3  
Napa State Hospital  
2100 Napa Valley Highway  
Napa, CA 94558-6293

Dated: November 2, 2018

Susan Y. Soong  
Clerk, United States District Court

By:   
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO